

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE HURRICANE SANDY CASES

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JACK S. KANNRY and JOYCE F. KANNRY,)

)
)
Plaintiffs,)

)
-against-)

)
LIBERTY MUTUAL GROUP INC.,)
acting by and through its LIBERTY)
MUTUAL FIRE INSURANCE COMPANY,)

)
)
Defendant.)
-----X

Case 2:14-cv-01539-GRB

**PLAINTIFFS NOTICE OF
CROSS-MOTION FOR
SUMMARY JUDGMENT**

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE that, upon the annexed affidavit of plaintiff Jack S. Kannry, sworn to on September 5, 2014 and the exhibits attached thereto, and the accompanying memorandum of law, in opposition to defendant's summary judgment motion and in support of plaintiffs cross-motion for summary judgment; together with all prior proceedings had and papers served herein, plaintiffs hereby move, pursuant to Fed. R. Civ. P. 56, for summary judgment as to liability only on their asserted claims, with requested bifurcation of claimed damages for subsequent consideration by this Court, on the grounds that there are no material issues of fact as to defendant's liability for the state law tort claims herein, which are not preempted and barred by federal law in the absence of any breach of contract flood claims by plaintiffs in this action, and which federal law is therefore inapplicable to this case, with this Court being the appropriate forum to consider such state law claims in this diversity case, over which it has jurisdiction.

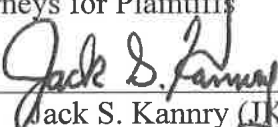
PLEASE TAKE FURTHER NOTICE that plaintiffs above stated papers on this cross-motion also oppose the defendant's motion for summary judgment seeking dismissal of plaintiffs' claims, on the grounds that said motion only addresses unpleaded federal flood insurance breach of contract claims rather than plaintiffs' actual state law tort claims, and that defendant has waived and is equitably estopped from asserting its summary judgment position, based on defendant's course of conduct with respect to an earlier flood claim and its initial consistent conduct as to the plaintiffs' Hurricane Sandy flood claim, with subsequent position reversals creating misrepresentation upon which plaintiffs had reasonably relied to their detriment.

Defendant's opposition papers on this cross-motion and reply papers on its motion, if any, are to be served by September 19, 2014, pursuant to the amended briefing schedule ordered by this Court.

Dated: New York, NY
September 5, 2014

WARSHAW BURSTEIN, LLP
Attorneys for Plaintiffs

By:


Jack S. Kannry (JL6237)

555 Fifth Avenue
New York, NY 10017
212-984-7720
jkannry@wbcsk.com

To: Sean P. Sullivan, Esq.
Nielsen, Carter & Treas, LLC
Attorneys for Defendant

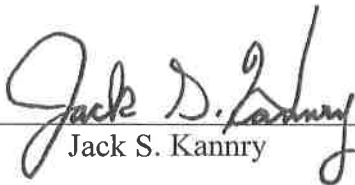
Gail M. Kelly, Esq.
Conway, Farrell, Curtin & Kelly, P.C.
Local Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2014, I caused a copy of the foregoing Plaintiffs Notice of Cross-Motion for Summary Judgment, Affidavit of Plaintiff Jack S. Kannry, sworn to on September 5, 2014, in Opposition to Defendant Motion for Summary Judgment, and in support of Cross-Motion, with annexed exhibits, together with Plaintiffs Memorandum of Law in Opposition to Defendant Motion and in Support of Plaintiffs Cross-Motion, each dated September 5, 2014, to be served upon the following attorneys for the parties in the above-captioned case via electronic mail at the addresses shown below, and by regular mail as indicated, being the addresses designated by said attorneys for that purpose.

Sean P. Sullivan, Esq. (via e-mail: ssullivan@nct-law.com)
Nielsen, Carter & Treas, LLC
3838 North Causeway Boulevard, Suite 2850
Metairie, LA 70002
Attorneys for Defendant

Gail M. Kelly, Esq. (via e-mail: gkelly@conwayfarrell.com and regular mail)
Conway, Farrell, Curtin & Kelly, P.C.
48 Wall Street, 20th Floor
New York, NY 10005
Local Counsel for Defendant



Jack S. Kannry